

Examining Attorney: CHISOLM, KEVON
Serial Number: 76/514287



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Kay Home Products, Inc.
Serial No. : 76/514,287
Filed : May 15, 2003
Mark : 3 IN 1
Examining Attorney : Kevon L. Chisolm, Law Office 103
Attorney Docket : KH0696US (#90636)

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REQUEST FOR RECONSIDERATION

Dear Sir:

This request is submitted in response to a FINAL Office Action issued by the Examining Attorney in Serial No. 76/514,287 mailed on November 9, 2004.

The Examining Attorney continues and maintains the refusal to register under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d) because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2,770,460 as to be likely to cause confusion, to cause mistake or to deceive. This finding by the Examining Attorney is again respectfully traversed. Applicant encloses herewith a Declaration in which Applicant's attorney declares that, having undertaken a survey of major retailers who offer both electric appliances and barbeque grills, no retailers sell these devices in the same department. Thus, a purchaser



of goods, such as the devices sold under Registered mark 2,770,460 for 3-IN-1, that is, goods of “electric cooking apparatus, namely sandwich makers, electric wafer irons, electric grills, electric toasters, as far as not included in other classes”, would find these goods in a separate department, such as small appliances or housewares, from goods offered under applicant’s mark, that is, outdoor grills, fireplaces, smokers or chimineas, which are sold in a seasonal goods or outdoor or camping equipment department.

Applicant respectfully points out that the “electric grills” of ‘460 are not the same as the electric or gas or charcoal barbeque grills found in the Examiner’s internet search. If the ‘460 grills were equivalent to barbeque grills, then the ‘460 device would not be combinable into a “3 in 1” device with small electric appliances such as sandwich makers or electric toasters. Applicant reiterates that, based in part on applicant’s attorney’s survey, the channels of trade are distinct between the two marks (small electrical appliances and outdoor grills) and that the conditions surrounding the marketing of the goods are not such that these goods could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. Thus, applicant strongly believes that the likelihood of confusion is minimal and requests that this rejection be withdrawn.

Also, the Examining Attorney continues and maintains the refusal to register on the Principal Register because the proposed mark merely describes the goods. Applicant respectfully traverses this rejection and reiterates that applicant’s mark, without more, does not name the nature of the goods because the goods are barbeque grills as well as smokers, grills and outdoor fireplaces. A consumer seeing or hearing the phrase “three-in-one” would not know what three things are combined into one product without more

information; one could reasonably think that one item had three uses, for example.

Applicant respectfully requests that this rejection be withdrawn.

For the foregoing reasons, it is believed that this application is now in proper form, and it is respectfully requested that it be passed on for publication. The Examining Attorney is invited to telephone the undersigned if there are any issues pertaining to this amendment which may be resolved to expedite the prosecution of the application.

Respectfully submitted,

Date: May 9, 2005
DPH/KRV

By: 
D. PETER HOCHBERG, Reg. No. 24,603

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CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that this paper (along with any paper referred to as being transmitted therewith) is being deposited with the United States Postal Service on the date below as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

May 9, 2005
Date


Katherine R. Vieyra

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DECLARATION

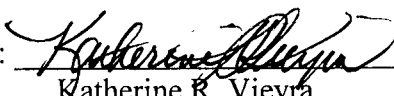
The undersigned declares the following:

1. On Monday, May 9, 2005, I contacted the following stores: Sears, Loews, K-Mart, and WalMart which sell both charcoal and gas grill and small electrical appliances including electric toasters and grills, and that each of these stores sells these items in two separate departments.
2. That I am properly authorized to execute this application on behalf of the applicant; I believe the applicant to be the owner of the trademark/service mark sought to be registered; to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on it in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that the facts set forth in this application are true; all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any

registration resulting therefrom.

Kay Home Products, Inc.

Date: May 9, 2005

By: 
Katherine R. Vieyra
Attorney for applicant